ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

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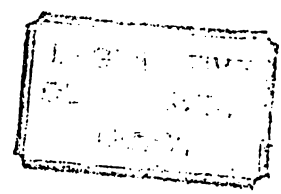

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1878.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 7th February 1877.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
Major-General the Hon'ble Sir H. W. Norman, K.C.B.
The Hon'ble Sir Arthur Hobhouse, Q.C., K.C.S.I.
The Hon'ble Sir E. C. Bayley, K.C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Sir J. Strachey, K.C.S.I.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble Mahárájá Narendra Krishna.
The Hon'ble F. R. Cockerell.
The Hon'ble B. W. Colvin.
The Hon'ble R. A. Dalyell.

SPECIFIC RELIEF BILL.

The Hon'ble SIR ARTHUR HOBHOUSE moved that the Reports of the Select Committee on the Bill to define and amend the law relating to certain kinds of Specific Relief, be taken into consideration. He said that there were two of these reports. One of them was the report which he presented to the Council last week, and the other was the report which he had presented on the 22nd of last November. With regard to the earlier of these Reports he had explained it at the time in some detail, and he did not know that there was any other point to which he need draw the attention of the Council. As for the later report it left the Bill substantially unaltered. Therefore he had nothing absolutely new to say on the present occasion. At the same time as it was considerably more than a year since the Bill was introduced, and as he had a motion on the paper which required explanation, it would perhaps be convenient if he briefly reminded the Council what was the exact ground which the Bill was intended to occupy, though in so doing he should do little more than substantially recapitulate what he had already stated more in detail on former occasions.

This Bill dealt principally with the incidents of contracts. The second Chapter (which was the most important and the longest Chapter in the Bill), the third and the fourth, were concerned exclusively with contracts. The fifth, sixth, seventh, ninth and tenth chapters treated of the remedies which might be claimed on contracts and also the remedies which might be claimed on rights independent of contracts. The title of parties, or those substantive rights on which a man might sue, formed no part of the ground covered by this Bill: those rights were governed in the case of contracts by the Contract Act, and in other cases by other laws either written or unwritten. The process by which a right was enforced was laid down by the Civil Procedure Code. But between the title and the process there was an intermediate region. The rights of a man might be known, and the process for enforcing them might be known, but it remained to know the nature of the remedy which, if a suitor, he was to seek, or if a Judge, he was to award. It was that region which was intended to be covered by this Bill.

The nature of the remedy was so important a matter that in England it had been one of the chief causes of that very striking feature in our constitutional history, the severance of the jurisdiction of Law and Equity. The Courts of Law refused to grant remedies which the growing activity and civilization of the country more and more demanded. However easy a contract might be of performance, however wanton the refusal to perform it, a Court of Law would not decree its performance, but only gave some pecuniary compensation for the loss suffered by its breach. However clear it might be that an injury was threatened, and that if inflicted it would be irremediable, a Court of Law would not prevent it, but would wait until the injury had been inflicted before it would help the suffering party. They refused all preventive relief and they refused all specific relief; they only granted relief by way of compensation, which in many cases was no relief at all, and in many more cases was wholly inadequate. Therefore it was that the Chancellors stepped in and occupied that tract of natural justice which the Courts left waste, and there arose the two important heads of equity jurisdiction,—the specific remedy by way of performance, and the preventive remedy by way of injunction.

Our Courts in India had got rid of what had always seemed to him, that great opprobrium of English law: they were Courts of Law and Equity also. And there were two sections in the Civil Procedure Code in which, stepping somewhat beyond the strict subject of procedure, the Code had either distinctly affirmed or had conferred jurisdiction to grant specific relief. The fifteenth section of the Code affirmed the right to grant a declaration of

title; and the hundred and ninety-second section conferred on the Courts express power to make a decree for the specific performance of a contract; but these sections did not give to the Courts any guidance on these subjects, which, as he had already intimated, were beyond the strict scope of the Code. The object of the Bill was to take up these subjects, and the other subjects of specific relief, to treat them in a more full and comprehensive way, and to lay down principles and illustrate them by instances so as to supply guidance both to suitors and Judges.

Now he had before stated to the Council that the Bill consisted mainly of the law administered by the Court of Chancery. But they had been enabled very much to simplify the law owing to three material points of difference which existed between England and India. The first and by far the most important point he had already mentioned, that we avoided the dual jurisdiction of Law and Equity; or, in other words, that we did not have one set of Courts to do injustice, and another to correct and restrain that injustice.

Another material point of distinction was that in India we had got rid of that most artificial law, the Statute of Frauds. He had before mentioned to the Council that not long after that Statute was passed, a high legal authority, Lord Chancellor Nottingham, declared that every line in it was worth a subsidy. If he had lived till now he might have added that the cost was still greater than the worth; for not only every line but every word of it must have cost a subsidy. SIR ARTHUR HOBHOUSE did not know of any law that had given rise to so much litigation. And the reason was plain. It introduced strict formalities into the most informal every-day transactions in the lives of persons who had never been accustomed to such formalities, and who had not to this day, although two hundred years had elapsed since the passing of that Statute, become accustomed to them. The result was that, owing to the omission of some formality, the most glaring injustice might be done, and the Judges, who with all their training, were men of like passions with ourselves, resented that injustice and strained the law to avoid inflicting it. Thus came subtle refinements and a chaotic state of the law; for if a man felt that he had justice on his side, the state of the law was such that he need not despair of gaining his suit. SIR ARTHUR HOBHOUSE did not think that among the many difficult questions which beset the subject of specific performance of contracts, there was one which was so hopelessly entangled or so difficult to unravel as that which was connected with the Statute of Frauds. In India they had placed the law upon what he believed to be a more natural and healthy footing. At all events they had been able to avoid these difficult questions as they could not have done if they had been framing such a measure for England.

Another point of difference which was not of so much importance was this, that by the Limitation Act they had provided a definite time within which a man must sue for specific performance, and they thereby avoided those delicate questions which arose out of the English law, the rule of which was nevertheless an excellent one, namely, that a man who sought this kind of remedy must seek it quickly.

There was one part of the Bill which was not drawn from the rules of the Court of Chancery. It was Chapter 8, which dealt with the performance of public duties. It was drawn from the jurisdiction of the Court of Queen's Bench to issue the high prerogative writ of Mandamus. Those of the High Courts which possessed ordinary original civil jurisdiction possessed also as a part of it the right to issue these writs; and Chapter 8 of the Bill was intended to take the place of those general expressions which conferred this jurisdiction on the High Courts.

The Council would now see that this Bill was intended to form a link between the law of procedure and that substantive law which ascertained the rights of parties. It was intended in effect to be supplementary to the new Civil Procedure Code, and to be passed after that Code had been passed into law. But its progress in Council had been quicker than that of the Code; it had now reached that stage beyond which they could not reasonably hope to improve it much, and when a business had reached that stage it was better to get it done. He therefore proposed if the Council accepted these Reports to go a step further and pass the Bill into law that day. The Civil Procedure Code, which was pending before the Council, was not ready for further presentation. It proposed certain forms and directions which were applicable to this Bill. It would therefore be a neater operation if this Bill were to take effect after the Civil Procedure Code had become law. It was not necessary so to arrange matters, though it was just so much more convenient as to make it worth while to postpone the operation of this Bill for a moderate time. The Bill was drawn so as to come into effect at once, on the supposition that it would not be ready till after the Code was passed. When before the Committee this point was not observed. He was in hopes that the Civil Procedure Code might become law before the first of May, and it was therefore proposed to postpone the operation of this Bill to that day. The hope he had just expressed belonged to a class which was often disappointed, and this hope might be disappointed. It might be that something would occur to postpone the passing of the Code for a term of years beyond the twelve years which had elapsed between its inception and the point which it had now reached. And if it should be so,

it was better that this Bill should become law. It was so framed that though it would work better in unison with the Civil Procedure Code, it would also work efficiently without it. That however was the subject of the next motion. He would now put his first motion in the terms of the notice.

The Motion was put and agreed to.

The Hon'ble SIR ARTHUR HOBHOUSE also moved that, in section 1, for the words "at once," the words and figures "on the first day of May 1877" be substituted, and that to section 2 the following words be prefixed (namely) "On and from that day." He said the sole effect of the motion, if carried, would be to bring the Bill into operation on the 1st of May instead of that day. He had fully explained the reason for that postponement.

The Motion was put and agreed to.

The Hon'ble SIR ARTHUR HOBHOUSE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

ACT No. XIII OF 1875 AMENDMENT BILL.

The Hon'ble SIR ARTHUR HOBHOUSE also presented the Report of the Select Committee on the Bill to amend Act No. XIII of 1875.

The Council adjourned to Wednesday the 14th February 1877.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA,
The 7th February 1877.

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